ART. V. — *Elements of International Law.* By HENRY WHEATON, LL. D. Eighth Edition. Edited, with Notes, by RICHARD HENRY DANA, Jr., LL. D. Boston: Little, Brown, & Co. 1866. 8vo. pp. xlvii., 749.

THIS book has not been given to the world too soon. The original work was first published in 1836; the edition embodying the author's latest additions followed in 1846. The character of Mr. Lawrence's ponderous and evil-disposed labors in 1863 will justify us in laying his edition quite aside. The work, then, as it has come down to us from Mr. Wheaton's own hands, though constructed upon a superior plan to any other treatise on the same subject, yet leaves the events of a wide and stirring period to be chronicled. The science of international law is daily growing, varying, advancing; especially of late years its developments have been rapid, numerous, and important to an extraordinary degree. The *Ultima Thule* of the wisdom of the last generation seems but a milestone long since passed in our quick career. The civil war in this country has alone been as prolific of new complications, new questions, new views, as half a century of former days. In no study, we venture to say, does the advance of the Christian nations of the world in civilization and in that public morality which is, after all, only the conglomerate of countless individual moralities, more clearly show itself than in that of international law. There we see a steady progress; each generation of publicists, of statesmen, even of warriors, demonstrates equally in word and deed an increasing respect for the abstract principles of humanity and justice, a greater reverence for the peaceful dictates of law. Reason steadily gains ground; violence as steadily recedes. Thus, since each important change is tolerably sure to be for the better, it is of the utmost importance to the interests of humanity that each change should be quickly laid fast hold of, and reduced into the written code of the law of nations.

We are glad to be able to say that, in the work before us, the enlightened and humane temper of Mr. Dana is no less conspicuous than his erudition and discretion. His numerous and elaborate notes, some of them extending to the length of thirty closely

printed pages, form, as it were, a series of essays setting forth the divers novelties and changes introduced into the science within the last twenty years. Mr. Dana shows a peculiar felicity in preserving the same just appreciation of relative values which is a distinguishing excellence of Wheaton's original work. He seems gifted with an apt discretion, which, like an instinct of the intellect, guides him in a wise selection and just proportioning of his matter, and which prominently appears in the skilful mingling of the theories of the ancient publicists, the precedents afforded by history, the decisions of legal tribunals, the discussions of statesmen, and his own opinions upon new or disputed points.

In the works of Grotius, Vattel, and others of the time-honored writers, — we may well call them the fathers of the science, — there is unavoidably a theorizing, impractical tone, an appearance as of the expression of individual notions of sound sense and justice, oftentimes somewhat Utopian, and certainly more like the wisdom of learned scholars than of men conversant with the ambition of soldiers, the negotiations of diplomatists, or the enterprise of merchants. But International Law now not only allows, but demands, a different mode of treatment; we require now not so much individual speculation and theories of abstract justice as a thorough and exhaustive compilation of instances, and an acute and critical analysis of principles. We wish to know both what things have been done, and upon what principle they have been done; under what circumstances they were undertaken by the one party and submitted to by the other; and, finally, we need a judicial summary of their precise value as precedents. A work executed with ability, for the satisfaction of these objects, will answer one of the most important wants of the times. Such we regard the work which Mr. Dana has accomplished. His notes are remarkable for clearness alike in statement and in argument. His style is distinguished by accuracy, never pruned into meagreness, never bursting into redundancy, which is doubtless the result of his long and careful professional training. Even when tracing the thread of strict legal reasoning, he preserves that lucidity of expression and of logical sequence which renders his meaning comprehensible to every reader.

It is a general impression that the necessity which the lawyer is under of *representing* only one side, must be either the cause or the result of a habit of *seeing* only one side. No notion can be more incorrect. It is no less the lawyer's function to anticipate the opposite side, than it is to set forth his own; he must refute opposing arguments, and to refute he must foresee. A well-trained lawyer then, in any case where he is not misled by personal passion and prejudice, will readily throw off the spirit of advocacy and assume the equity of the judge. But where he is under the influence of personal passion or prejudice, he will doubtless prove himself subject, like the rest of us, to a greater or less degree of human frailty, according to his temperament and his self-control. Mr. Dana has been subjected to a peculiarly severe trial of this nature. It has been his duty to state and to discuss the numerous points which have been raised in our late civil war. Upon the one shore the miserable wreck of his predecessor furnished him with an ominous warning; but on this rock there was little need of a beacon to admonish him, — his danger lay on the other quarter. Even such language as would well become a history would be wholly out of place and inexcusable in a legal treatise, where the picturesque qualities of light and shade, however truthful, and vivid representation, however lifelike, are altogether inadmissible. Forgiveness should certainly be accorded to an only moderate bias, but in truth we can see no call for charity; the judicial impartiality which is preserved throughout these notes seems little short of a miracle of self-control. Certainly the value and the temper of the editor's work will meet with entire commendation in all countries in the second and third generations hence. No one will then discover, except as a matter of history, that this contemporary annotator was himself, as it were, a party contestant in the grand struggle of which he writes with such judicial coolness.

It is true that a comparatively large space is allotted to the discussion of these American points, but perhaps not unduly. We must consider that these questions arose out of a rebellion in one of the leading powers of the world, not only of unexampled magnitude, but also of a peculiar nature. It was not a revolt against a monarchy, of which the precedents are numer-

ous and the features necessarily for the most part familiar, but a secession of certain organized parts of a commonwealth from the major part thereof, a matter without precedent, and presenting an aspect wholly novel. Further, the questions arising between this country and Great Britain were of more than usual importance, as being of a nature likely to repeat themselves in all wars which may occur between civilized nations for a long period to come. They arose between the two great maritime powers of the earth, who in such cases must be expected to lay down the law for others: they were fully discussed, by no means in a spirit of amity, and by nations so proud and so well matched that no decision can wear the appearance of an erroneous result brought about by the influence of fear or prudence. Finally, it is a general principle, that the newest law is for the time the most valuable; it is the result and embodiment of much of the old law; it is the exponent of the latest views and principles; it has not yet been so tested that its exact force and value are known, and may be stated in a sentence, but it needs to be fully studied in all its attendant circumstances. In view of these considerations, we may safely conclude that the notes on American points are not, as a general rule, unduly elaborate, but that they simply meet fairly the natural exigencies of the subject. Moreover, in international law, the practical result is apt to have great influence in fixing the legal value of the event. We have attained a result so decisive and so contrary to that anticipated by the most eminent European publicists, no less than by Mr. Lawrence, that it is well to have the arguments which they have been busied for five years or more in inculcating elaborately answered and conclusively refuted.

The first note which by its length and value attracts our attention is that upon the "Monroe Doctrine." The subject, of course, is full of interest, not only for its past associations with our national history, but for its bearing upon present circumstances and its inevitable connection with many questions which must hereafter arise in the career of this country. In the frequent discussions concerning the present aspect of affairs in Mexico, the position which it is incumbent upon the United States to assume, and the relations which it is her right, her

policy, or her duty to maintain with France and the Imperial faction, the Monroe doctrine is a phrase on everybody's lips, and is used by the advocates of interference as a name to conjure with. The story of its birth and growth will then naturally be just now listened to with even more than ordinary attention. We use the term *growth* advisedly: for, as Mr. Dana shows, it has verily grown; and the Message of President Monroe contained only the germ of that theory, which, at least in the mouths of the many, is now intended by the words. From the connection in which the phrase is now used, — even by educated and well-read persons, — and from the inferences and arguments which they found upon it, it may be safely concluded that the present popular notion of its meaning is nearly this: that it lays down as the policy of the United States a double rule, whereof the first subdivision prohibits our government from interfering in the wars and entanglements, or becoming party to the internal offensive and defensive alliances of European powers; and the second subdivision enjoins upon us to allow no intervention by European powers in the affairs of American states, excepting, of course, such parts of either of the American continents as are already the rightful dependencies of European crowns. The underlying principle of this latter injunction is generally understood to be, that, as the United States is the grand example, and may naturally be regarded as the protectress, of popular governments, and as, on the other hand, the European powers stand in the same relations to the monarchical and despotic principle of government, therefore it will be not only generous, but also wise and politic, for the United States to preserve this Western hemisphere, so far as possible, free from the control and invasion of European principles, and to lend the peoples thereof such countenance, aid, and protection as they may require in the establishment and maintenance of republican and democratic systems; and further, to this end, that we must constitute ourselves the watchful guardians of our weaker sisters, and hold ourselves ever ready to interfere in their behalf whenever European armies or diplomacy threaten the subversion of their domestic government. It is then but a step to insist on this principle as a component part of the doctrine itself; and we already find that many persons consider

that the true force and point of the Monroe doctrine is correctly expressed by stating that it alleges our true policy to be to guarantee and to preserve the existence of all popular governments now existing in either continent against external assault or foreign intrigue. Thus by degrees the corollary is becoming embodied in the theorem, and perhaps the doctrine has not yet reached its entire growth. Of course, in fulfilling the spirit of the doctrine thus understood, we might at any moment find ourselves obliged to take part in a foreign war. This popular notion contains certainly a vast deal of generosity, and, if read by the lamp of reason, betrays no insignificant amount of worldly wisdom and sound policy. But it is important to bear in mind that neither the old doctrine, nor this novel phase of it, is anything but the statement of a policy maintained by individuals, be they more or less in numbers and influence. Yet in all its forms it has found able and eloquent advocates; it has always been a word of power in the land; it has been a cry which even its opponents have treated with respect and assaulted with moderation. Thus it has gradually grown in prestige and influence. But it has never yet been in any manner officially adopted as a rule to national action. The efforts which have been made to secure such adoption have invariably failed; and we have yet to see it become the cause of complication between our own and a foreign government.

What the original doctrine was, and how far it fell short of the modern theory which bears the same name, we will now proceed to inquire. In 1823 two sources of dispute threatened to disturb our foreign relations: the first grew out of the pretensions of Russia, who claimed exclusive rights over the territory extending from the Frozen Ocean on the north to the fifty-first parallel on the south; the second arose from the pending controversy with Great Britain concerning our northwestern boundary. In connection with these claims, these two powers asserted that the immense wilderness of the West was still open to discovery and colonization. In reference, then, to these matters, President Monroe, in his Annual Message to Congress of December 2, 1823, said: "The occasion has been judged proper for asserting, as a principle in which the rights and interests of the United States are involved, that the American continents,

by the free and independent condition which they have assumed and maintained, are henceforth not to be considered as subjects for future colonization by any European power." The simple intent of this clause has been perverted and magnified to an extraordinary degree, until it has been even assumed to contemplate a complete prohibition against the acquisition by any European power of any territory upon either American continent, by any means whatsoever, be it by conquest, voluntary cession, treaty stipulation, purchase, or even by a succession through family alliances. But no enunciation of policy was ever more completely misconstrued. These words were spoken as words of guidance and counsel, bearing upon the then existing state of national affairs and upon questions then imperatively pressing for a decision; with reference to these it must be read. Here was an immense and valuable territory, — the entire West, — in a great part of its extent wholly unexplored even by the wandering and adventurous feet of trappers and backwoodsmen. All this grand tract the United States claimed as its own proper domain, subject only to the encumbrance of an unsettled boundary line. But Great Britain and Russia claimed that it was *terra nullius*, that it was still open to discovery and occupation, and was subject to those ordinary rights of ownership which in the allotment of these new continents had been universally conceded to that power whose subjects should be the first to penetrate and colonize unknown and unsettled regions. President Monroe intended to announce that the United States absolutely denied the existence of any right to colonize these Western wilds on the part of any foreign nation. This ground taken by him had been already laid down by Mr. Adams, then Secretary of State, who had written, a few months earlier, that "The American continents henceforth will no longer be subject to colonization. Occupied by civilized nations, they will be accessible to Europeans and each other on that footing alone." Whatever light is required for deciphering the significance of the President's words is shed upon them by this letter. It shows that their force was simply to aver that the American continents, however unredeemed, or even untrodden, in parts, were nevertheless, so far as the right of possession was concerned, wholly appropriated in every part by some one or

another of civilized nations; that the day had gone by when any foreign government could acquire territorial claims simply by virtue of the journey of one of its subjects through the forest or over the prairie, and the planting of its national ensign on a beach or a mountain-top, after the fashion in which it had been customary to secure a species of pre-emption right in the earlier days of the New World; also, further than this, that the settlement of squatters or immigrant bands in any part of the continent could no more be valid to transfer ownership and jurisdiction to their parent country, but that they would remain either as trespassers or as subjects on the territory of that nation to whom the tract in question had previously pertained. In a word, the statement was, that every acre of American land had its recognized and legitimate sovereign and owner, and that no shifting of sovereignty or ownership could be thereafter effected by discovery, exploration, or settlement. This doctrine was laid down simply to meet the present exigencies of the times. If this view be correct, it robs this clause of all but historical interest, since any possibility of such claims as those then advanced by Russia and England has been long since totally and forever precluded.

We pass next to passages which follow, after a short interval, in the Message, which may be of greater present interest, and in which whatever of vitality still lingers in the old doctrine must be sought. Shortly before this time the famous Congresses had been held at Laybach and Verona, and the Holy Alliance had been formed for the express purpose of mutual assistance between the monarchs and despots who were parties thereto, against all movements threatening the stability of their power, and for a common guaranty of their thrones. That these confederates were quite in earnest in their intent had been put beyond a doubt by their vigorous suppression of the recent popular commotions in Spain. And now, having restored tranquillity in that country, they were turning their attention to the Spanish and Portuguese colonies in South America. These colonies had some time before taken advantage of the imbecility of their Transatlantic rulers to throw off the yoke of subjection, and establish independent and democratic forms of government. They had thus far thriven well,

and their success had been long regarded as beyond the possibility of question. But the threats of so formidable a combination as the Holy Alliance at once cast an ominous cloud of doubt athwart their newly risen sun. With eloquent earnestness they sought for aid from the United States, appealing at once to their sympathy, their generosity, and their obvious interest. Great Britain, who regarded the Holy Alliance with more of jealousy than friendship, backed their suit. Powerful and eloquent appeals were made in their behalf by American orators; and popular feeling ran high, and daily higher, in their favor. The question must come before Congress early in its session, and the President expressed to it his views in the following clear language: —

"In the wars of the European powers, in matters relating to themselves, we have never taken any part, nor does it comport with our policy so to do. . . . . The political system of the allied powers is essentially different in this respect from that of America. . . . . We owe it to candor, and to the amicable relations existing between the United States and those powers, to declare that we should consider any attempt on their part to extend their system to any portion of this hemisphere as dangerous to our peace and safety. With the existing colonies or dependencies of any European power we have not interfered, and shall not interfere. But with the governments who have declared their independence and maintained it, and whose independence we have, on great consideration and on just principles, acknowledged, we could not view any interposition for the purpose of oppressing them, or controlling in any other manner their destiny, by any European power, in any other light than as the manifestation of an unfriendly disposition toward the United States. In the war between those new governments and Spain, we declared our neutrality at the time of their recognition; and to this we have adhered, and shall continue to adhere, provided no change shall occur which, in the judgment of the competent authorities of this government, shall make a corresponding change on the part of the United States indispensable to their security."

Then, speaking of the recent forcible interposition by the allies in the internal concerns of Spain, he says: —

"To what extent such interposition may be carried, on the same principle, is a question in which all independent powers whose governments differ from theirs are interested, and even those most re-

mote, and surely none more so than the United States. Our policy in regard to Europe, which was adopted at an early stage of the wars which have so long agitated that quarter of the globe, nevertheless remains the same; which is, not to interfere in the internal concerns of any of its powers; to consider the government *de facto* as the legitimate government for us; to cultivate friendly relations with it; and to preserve those relations by a frank, firm, and manly policy, meeting in all instances the just claims of every power, submitting to injuries from none. But in regard to these continents circumstances are eminently and conspicuously different. It is impossible that the allied powers should extend their political system to any portion of either continent without endangering our peace and happiness; nor can any one believe that our Southern brethren, if left to themselves, would adopt it of their own accord. It is equally impossible, therefore, that we should behold such interposition in any form with indifference. If we look to the comparative strength and resources of Spain and those new governments, and their distance from each other, it must be obvious that she can never subdue them. It is still the true policy of the United States to leave the parties to themselves, in the hope that the other powers will pursue the same course."

In these sentences it is very clearly laid down as a general principle, that the United States would shun all entanglements in European politics, so long as it should be possible for her to do so. But this principle was older by far than the Message, and in 1823 had long been elementary knowledge, and had passed into an axiom with American statesmen. Even then it was long since the merchants and ship-owners of the seaboard States had learned to look upon the struggles of European powers as affording the rich harvest period when the neutral bottoms of this country could reap golden fields and garner all the richness of foreign lands. This enunciation of policy then was neither new nor striking. But in the matter of prohibiting Transatlantic interference in Cisatlantic affairs, how far does the Message go? Does it authorize us to call by the name of the Monroe Doctrine that theory which has been above stated to be involved in the modern popular apprehension of the phrase? Certainly Mr. Dana seems to us to be correct, when he says that the Message does not go so far, — does not lay down any such rule of general application. This portion, like that which preceded, is to be regarded simply

as expressing the opinion of the chief executive magistrate upon the course which it behooved Congress to pursue in reference to the Spanish-American question, as it was called. Here was an extensive and warlike confederation, leagued for the interests and perpetuation of the monarchical system of government simply as such, bound avowedly to support the abstract principle of single against popular sway; it had already shown both the will and the ability to act on its own continent; it now began to demonstrate a proselyting spirit, and to threaten to stretch its mail-clad arms across the Atlantic, there to add new links to its strong chain by the forcible coercion of the reluctant and free nations of the Western hemisphere, and to seek them in the immediate neighborhood of this country, — as it were, to pluck away from the very skirts of our garments those young nations who clung to us, pleading hard for sympathy and protection. If this were permitted, the United States might certainly fear that the time would come when her suffering temper would too late become the source of regret to her; when she would find herself, as the sole representative of free government, occupying a position of most uncomfortable solitude; and would then painfully regret that she had carelessly sacrificed the opportunity, once presented, of securing a thriving and a grateful band of allies. Many persons, throughout the country, were loudly crying that ordinary prudence and foresight demanded that the United States should act before it was too late, and should publish her warning to these political crusaders before they should have committed themselves too far to be able honorably to draw back.

The Message stated that, in the opinion of the President, the country could not witness the proposed intervention by the Alliance without feeling herself *seriously aggrieved and even endangered.* What course she should pursue, — whether she should go so far as to share in the contest, — he did not intimate. Simply he said that it was not a business which we should allow to pass unwatched and unregarded; he left the door to an active interference open, but he did not commit himself to the policy of passing through it. If resolutions should be passed by Congress echoing the sentiments of the

President, then European politicians might combine the expressions of the executive and the legislative branches, and, placing them beside the clear current of popular opinion, might shrewdly surmise the probable result, and might be wise in time. But Congress passed no such resolutions, laid down no scheme of national policy, and we are left to gather from the President's language the meaning which he wished to convey. Certainly it seems to us no wider or more general than the exigency which it was intended to meet. The numerous other supposable cases, to any of which, should they arise, the present Monroe Doctrine, so called, would apply, find no applicable rule in the language of the Message.

Let us take the case presented by the existing Mexican imbroglio. The analogy between this and the South American question is as close as will often occur; and in this connection, if ever, we can cite the Message as, in spirit at least, pertinent. France professes to have causes of war with Mexico, which must be recognized as sound and sufficient. That for such causes she may declare war and seek reparation, no one would deny. But when she goes so far as to undertake to change the form of government from a republic to a monarchy, the question arises whether or not the United States shall interfere to prevent this. Then the doctrine is quoted, and its fame and antiquity are summoned to aid the advocates of intervention. In accurately defining the line of demarcation between the old and the new meanings of the term, we are, then, engaged in no idle logomachy, no frivolous quarrel on a mere matter of phraseology. It is not enough that the present popular meaning is definite and clear; it would not be enough even if this meaning were universally adopted, so that the force of the words could never be misunderstood. This name professes to represent a policy. It is the embodiment of a positive and somewhat complicated theory. Like an algebraic symbol, it stands for very much that is not expressed. But, having in one age been used to signify a certain series of ideas and arguments, and obtained the advocacy of leading men, and the enthusiastic belief of a large part of the nation, if at length it is gradually and almost imperceptibly altered, so that the significant no longer expresses the things formerly

signified, it is surely neither just nor wise to let the new doctrine, by virtue solely of preserving the same exponent, retain all the influence and prestige of the old. It is not fair to quote the language of honored and able statesmen who supported the one, in proof of the worth of the other. When we see this process going on, it is certainly worth while to clearly expose it, to show the difference between the new and the old, to let each stand upon its own merits, and to have no sailing under false colors, no parading in stolen armor. The new may be as good or better than the old. But let each be clearly distinguished; let men know accurately of what they and others are talking, and comprehend the force of their own and their opponent's language. Then whatever is done will be done advisedly and with due knowledge.

As yet, indeed, the new meaning has not been adopted as the rule of national conduct. Mr. Seward, in his excellent letter of December 6, 1865, to M. Montholon, speaking of the "national discontent," says that while the United States "recognize the right of sovereign nations to carry on war with each other, if they do not invade our rights or menace our safety or just influence," yet they "sympathize most profoundly" with the republican system of Mexico, and the effort to subvert this and to establish in its place a monarchy cannot "but be regarded by the people of the United States as injurious and menacing to their own chosen and endeared republican institutions." In his despatches to Mr. Bigelow, he says that interference by foreign states to prevent American states from enjoying their deliberately established republican institutions "is wrongful, and in its effects antagonistical to the free and popular form of government existing in the United States." And again he says, that though the United States desire to "cultivate sincere friendship with France," yet "this policy will be brought into imminent jeopardy" unless France shall desist from prosecuting her armed intervention for the substitution of a monarchy in place of the republic. All this language is only a shade more strong than that of President Monroe. It is in strict accordance with the true "Monroe Doctrine"; but it certainly marks out no positive course for the nation. There is not in it anything approaching to definite intimation of what we shall feel

called upon to do if the French intervention is persisted in. It does not commit us to interference; it conveys no threats of war. When, then, men are crying out that the Secretary of State has adopted the Monroe Doctrine, and has officially announced it as the policy of the nation, it is very essential that the people should know just what these words signify; should comprehend exactly what that doctrine is which has been adopted and announced by the Secretary; should understand to what it binds the country, if indeed to anything; and whether or not it directly, or by necessary implication, obliges us to an armed interference, and to a guaranty of the Mexican Republic.

We are in haste to pass to the important topic of neutrality, but we must pause in our way to notice Note 153, on "Belligerent Powers exercised in Civil War." (p. 374.) This is an admirable treatise, composed with such perfect impartiality as cannot fail to awaken high respect and admiration. It is a strictly professional discussion of pure legal principles. "The great Rebellion in the United States, of 1861," says Mr. Dana, "was not an insurrection of professed citizens for a redress of grievances, against a government whose general authority they acknowledged, nor an insurrection or civil war for the purpose of changing the government or dynasty of an acknowledged common country. It was an attempt of a majority of the people in one section of the country to organize themselves into a distinct and independent sovereignty; in other words, an attempt, by an act of revolution, to set up, within the previously acknowledged limits of a previously acknowledged common nationality, and of a government acknowledged to be legitimate, a distinct and independent nationality." (p. 374.) He then proceeds, with beautiful precision, to trace the exact legal relations which the United States and the Confederate States bore to each other in the conflict. In the eye of the law, the United States had the unquestionable right, whenever they had the opportunity, to treat any and all the Rebels as traitors and criminals, and to try and punish them as such, and to refuse to accord to them any right whatsoever which might be claimed by them in any other character. These were our undeniable rights. But, on the other hand, there was no imperative ne-

cessity upon us to exercise them to the extreme, or to any particular extent, or in any individual case. We could waive and remit them in whole or in part, at our option. For divers reasons of sound policy, — to enjoy the belligerent right of blockade, to free ourselves from liability to foreign powers for injuries to their commerce, or other wrongs done them by the Rebels, and also for the humane object of preventing a barbarous retaliation, — we did choose, in nearly all matters in which the question arose, to treat our rebellious countrymen as foreign enemies, and to accord them the ordinary privileges of belligerents. We even consented in very many points, where we might at least have raised new and doubtful questions, that foreign nations might treat and regard the Confederates in the same manner. We sometimes deliberately, by our proclamations and our own actions, gave them the right to do so to some limited extent. But these were matters at our own option, both as to how far we would pursue this course and in what cases. That we did so once put upon us no implied obligation to do so again. A waiver operated only upon the especial case in which it was made. We were free to act in any subsequent case precisely as we chose, and were bound to no consistency. The stern course was our right; whenever we departed from it, our departure was simply a boon to the enemy, or a remission to a neutral third party, for which they might thank either our generosity, our policy, or possibly our necessity, as the case might be. This note is certainly the clearest and best exposition yet published of the precise legal *status* of the Rebels in this war. But after all the note shows, what must be acknowledged, that the civil war opened a dread vista of possible complications, and very serious and difficult questions, for which it afforded no satisfactory principle of solution, and which, had they not been put at rest by the liberal policy of our government, might, not improbably, have produced the most terrible and extensive contest yet recorded by history.

The note on Privateering (Note 173, p. 453) gives an interesting sketch of the diplomatic efforts which have been made of late years to abolish this nefarious system of warfare, or rather of plunder. The action of the European powers, which

resulted in the insertion of the desired prohibition in the famous Declaration of Paris, of 1856, is deserving of all praise; and it is agreeable to think that these articles have been signed by nearly all civilized nations. They constitute another milestone planted in the onward march of humanity. It is true that the United States, though invited, has not given in her adhesion to this Declaration, and has not renounced the privateer system. To the note of invitation addressed to her she replied, — referring to the article abolishing Privateering, and also to the third article, which established the rule of Free ships, free goods, — that her accession must be conditional upon the insertion of an article which should secure immunity to all private property at sea not contraband. This proposed addition is known as the "Marcy Amendment," or as the "American Amendment." It was certainly eminently desirable. It was a step in advance of the provisions of the Declaration; but it was a step which European enlightenment or policy was not yet prepared to take. The amendment was rejected, and the United States withdrew its offer to accede on this condition to the Declaration. The principle which she propounded lies, however, in the straight line along which nations have long been advancing; though not yet reached, it is at least in the way to be so. It will probably by degrees creep into favor in national conventions, will become more and more frequently a stipulation in treaties, and will finally pass imperceptibly into an acknowledged principle. At the commencement of the late war the United States was willing to waive this point, and to become a party to the Declaration. England and France, however, refused to allow her to do so, unless certain provisions, with sole reference to the special conflict then pending, were inserted. The United States refused to agree to so unfair and one-sided a proposition, and still remains a non-signer.

We now come to the grand chapter of the work upon the "Rights of Neutrals," — the subdivision which surpasses all others in importance, no less than in its serious complexities. The law of neutrality and the respective rights of neutrals and belligerents are now, and must probably ever remain, the central point of interest in any treatise on international law.

The fundamental idea is of comparatively modern growth. In the pagan days of Greece and Rome, neither the thing nor even the name existed. In the dark ages following the fall of the Western Empire, it was little more than a name. Having its source in Christian ideas of society, and depending for its support upon the progress of Christian enlightenment, it gained authority but slowly. In recent times it has developed and ramified with the development and ramification of modern civilization, and has become complicated in unison with its complication. Modern notions of justice, modern codes of law and decisions of courts, modern commerce and enterprise, the friendly intercourse no less than the extended warfare of modern nations, have all alike been busy with neutrality, until now it has become a branch of study extensive, comprehensive, nice, and exact to an extraordinary degree. As the tree shows each year its increase by a new ring, no less surely does this great code of international principles exhibit steady accretions from the busy ingenuity and fertile brains of each generation of men. It at once covers and unites large and valuable parts of the domains both of history and law; and there are few topics which demand in their pursuit so many or so high faculties of mind, or even, we may add, qualities of character.

The true nature and principles of neutrality were for a time so imperfectly comprehended, that the earliest writers recognized a species of qualified neutrality,—so qualified, indeed, that the element of neutrality was hardly left in any distinguishable form. A nation was allowed to bind itself by previous treaty to render to another in time of war stipulated aid, by contributions of money or of munitions of war, or by contingents of ships and even of men. The fulfilment of these agreements upon the breaking out of war was not supposed to deprive the would-be neutral of her claims to be treated as such by the other belligerent. The only trait requisite to make these contracts legal and proper appears to have been, in the phraseology of the law, *certainty;* that is, that the nature and precise amount of the aid to be rendered should be fixed by accurate language in the treaty. Beyond this, of course, no transgression was allowable. But this extraordinary notion has vanished before the more correct ideas of modern times;

and it is now admitted by all publicists, that a neutral claiming and seeking to exercise these rights may, at the option of the prejudiced belligerent, be treated as an enemy party. Likewise, in old times, enlistments by either of the hostile parties in the country of a neutral were openly and extensively carried on, and were considered liable to no objection. Modern governments, seeing more clearly the danger and the impropriety of such proceedings, forbid nothing with sterner prohibition. Any individual certainly is still free to follow his own bent, — to devote his fortune and his life to any cause he chooses, — to enlist and fight in a foreign quarrel if he will. But anything approaching an organized system of recruiting, with however much of secrecy and regard for external appearances it may be conducted, is now an ample cause of war, and could scarcely lead to any other conclusion.

In 1780 and in 1800 two famous armed neutralities were formed among European powers. The object of the parties to them was to put themselves in a condition to assert those rights and privileges to which their neutrality entitled them. The obvious danger of such alliances, especially if they be powerful, is that they will lay claim to and enforce rights and privileges, as pertaining to their neutral character, which, in fact, are not lawful appurtenances thereof, — conduct which would necessarily prove no less pregnant with future mischief than productive of immediate injustice. And further, though the legality of a neutral's undertaking to protect himself in his just rights by force of arms is unquestionable, yet these rights are on a very weak footing if they stand in need of such support. It lessens their prestige, and therewith their influence. Fortunately, the public sense of right and the general respect for law seem to have so grown since the beginning of this century, that it is now upwards of fifty years since the necessity for armed neutrality has been sufficiently felt to induce any nation to seek to enter into such a compact, or itself to assume such a position.

It may be safely said that neutrality is now, at least in the first instance, a question of diplomacy, law, and precedent. It is only when some new question seems to defy a decision by argument, or when the clear law is grossly disregarded, that

arms must be resorted to by nations who have no other method of solving their disputes. Probably those articles in treaties which concern neutrality are the ones which cost far the most anxiety and labor; and certainly perplexed discussions arising out of this topic are those which task most severely the skill of diplomatists, and which are generally assumed to afford the most accurate gauge of their ability and usefulness. Those deliberate stipulations which are entered into, generally during periods of peace and repose, and as provisions only for a contingent future, are apt to reflect that degree of moderation, wisdom, and justice which belongs to the age of their consummation, and thus show, upon an average taken through a sufficiently long period, sure and gratifying advances. Even those arrangements which are effected between statesmen of angry nations, in times of excitement and of clashing interests and passions, show the same pleasing fact, though perhaps less perfectly. But the toil is endless; for the instant that a war breaks out in any part of the earth, that instant combinations of circumstances begin rapidly to form and ceaselessly to evolve, seldom having exact precedents in the past, and frequently not fully anticipated or accurately provided for by prior negotiations. Thus new questions perpetually present their ominous points. The vast strides which the commercial world takes in every small cycle of years; the increased acuteness, subtilty, enterprise, and capital which business-men steadily acquire; the shrewdness with which they discover schemes for amassing great wealth in times of foreign, even if not of domestic disturbance; and the enormous ventures and risks which the greatness of the possible prize will induce them to incur; — these — even if any great sympathy or interest of the entire nation be out of the case, which does not perhaps usually happen, and if the government be honestly bent on observing at least the letter of its bond, which may more often occur — will nevertheless almost inevitably give rise to many questionable enterprises, to many complaints, to many delicate distinctions, supported by arguments not easily to be balanced, and to many complications, whose labyrinthine course may at any moment suddenly end in war.

As the true theory of neutrality has become better under-

stood, and the requirements which neutrals and belligerents may justly make of each other have, in many particulars, become more clearly defined, the feasibility of some more convenient and prompt machinery than diplomatic negotiations has become evident, and its need, both as a preventive and a cure, has become strongly felt. It was the effort to satisfy this need that first gave rise to the passage of Neutrality Acts. The United States had the honor of taking the initiative in this matter. In 1794 our first Neutrality Act was passed, — less elaborate, certainly, and less thorough than that which succeeded it in 1818, but nevertheless of great excellence, and especially exciting our pride when we consider the entire novelty of the business. At the time, war was waging between England and France. France had in this country an able emissary, M. Genet, — a man of a bold and enterprising temper and acute mind, who fully appreciated the policy of his country, and the objects which it lay in his power to compass for her. The United States, even standing aloof from the war, could aid France much; by becoming a party thereto, they would of course be able to aid her much more. M. Genet not unnaturally postponed foreign to domestic interests, and sought, without stint or scruple, to obtain all possible assistance, in any form and from any source whatsoever, careless, if not even pleased, if the result might be to implicate the United States as an enemy party against Great Britain in actual hostilities. Our treaty with France gave to her privateers great advantages in the use of our ports, and indeed created, to some extent, such a qualified neutrality as we have described above. M. Genet, with great plausibility stretching this dubious right to its utmost extent, and even beyond it, and skilfully availing himself of popular feeling, which ran high against England and was very favorable to France, made free and unwarrantable use of our ports for fitting out French privateers, and for the shelter and condemnation of prizes taken and brought thither by these same illegally despatched vessels. These proceedings were carried so far beyond what international law would allow, that the government, though placing itself thereby in opposition to popular sentiment, felt obliged to take some stringent course to stay the evil, before it

had gone so far as to plunge us into positive war. It was obviously desirable to place in some hands the power to interfere promptly in the earliest phase of each emergency; and in no quarter could this power be so wisely put as in the national courts, the natural dispensers of law and justice, who should act by virtue of, and in accordance with, such regulations as the legislative and executive branches should deem it expedient to frame. It was easier thus, upon proof of the intent to commit a breach of our national obligations, to nip the whole enterprise in the bud, than it was to wait till the mischief was done, and then only avoid war by a tardy and disagreeable reparation, following a long course of diplomatic dispute. The name of Law was formidable and respected among our own people; and the dignity as well as the wisdom of our national judiciary ought to inspire confidence abroad. At the same time, it was quite evident that no new general principles of law could be safely, or even honorably, laid down; that the statute, except only in its preventive clauses, must add nothing to the obligations already imposed by the code of international law. The first Neutrality Act, therefore, drawn and passed in these exigencies, professed only to enact, in a clear, compendious, and distinct form, certain old, established principles of law, binding upon this country as one of the sisterhood of nations as much before the act as after it, and designed to throw these into such a form that the courts might be able to take judicial cognizance of breaches thereof by virtue of this national statute.

The act gave no very great offence, but proved very useful, and remained upon the statute-book until 1817, when new circumstances called for and obtained a new act. This, however, proved less satisfactory than its predecessor, and stood only one year; and in 1818 all previous legislation was codified, and in the place of all prior laws was passed the famous statute of that year, which has continued to this day our national act upon this subject. If not perfect, it has certainly few serious defects.

A few months since, however, near the close of the last session of Congress, a new bill was introduced by a Representative from Massachusetts, and passed the House of Rep-

resentatives; but it was lost in the Senate, mainly, it is to be supposed, by reason of the exertions strenuously made against it by a Senator likewise from Massachusetts. We have little question that the Senator was wholly right. The proposed bill differed essentially from the old bill, upon the one hand, in the omission of certain provisions of surety and prevention, which seem to us of undoubted use, and to be only partially supplied by the substitute inserted in the new bill; and on the other hand, in adding the following section (10): "That nothing in this act shall be so construed as to prohibit citizens of the United States from selling vessels, ships, or steamers built within the limits thereof, or materials or munitions of war the growth or product of the same, to inhabitants of other countries, or to governments not at war with the United States"; — provided that the President may, under certain circumstances, temporarily stay the operation of this section.

That this addition was the main object to be gained by the alteration, there can be little doubt. It derives its significance from the decision rendered at about the same time by the United States District Court in the case of the Meteor. The opinion in this very interesting case in fact decides that citizens of the United States have not, under our present law, those rights and privileges which this section of the new bill confers upon them. If this decision is to stand as sound law in our land, certainly the section in question is a very desirable and proper adjunct to the old bill. That, however, this decision will not so stand, we cannot doubt. It is directly contrary to the views of the law previously taken by our most learned judges. Thus, for example, Judge Story, in the famous case of the Santissima Trinidad, says: "There is nothing in our law, or in the law of nations, that forbids our citizens from sending armed vessels, as well as munitions of war, to foreign ports for sale. It is a commercial adventure, which no nation is bound to prohibit, and which only exposes the persons engaged in it to the penalty of confiscation." This is clear language, and permits no double interpretation.

It is unfortunate that this case of the Meteor, destined as it is to be one of great importance in international law, no less than to private merchants in all lands, did not mature sufficiently

early to be treated of by Mr. Dana. But the position which he would have taken with regard to it is fortunately put beyond the shadow of a doubt by the explicit language used by him. Doubtless with this pending case in his mind when he wrote, though it was then in no form to be properly discussed, he says: "An American merchant may build and fully arm a vessel, and supply her with stores, and offer her for sale in our own market. If he does any acts as an agent or servant of a belligerent, or in pursuance of an arrangement or understanding with a belligerent, that she shall be employed in hostilities when sold, he is guilty. He may, without violating our law, send out such a vessel, so equipped, under the flag and papers of his own country, with no more force of crew than is suitable for navigation, with no right to resist search or seizure, and to take the chances of capture as contraband merchandise, of blockade, and of a market in a belligerent port. In such case, the extent and character of the equipments is as immaterial as in the other class of cases. The intent is all." (p. 563, note.) This language is no less plain and decided than that of Judge Story. That it is sound common-sense is undeniable; and it recommends itself to the legal sense of all who thoroughly study the point in a professional light. It is hard to imagine that the Supreme Court will run such a wild tilt against judges and publicists, tradition and good reason, as to support the present novel finding in the case of the Meteor. If they shall do so, it will then be certainly time to engraft the new clause, above quoted, upon our old bill.

It has been by many supposed that the decision in this Meteor case will be of great weight and importance as a precedent in the question of the Alabama and other Confederate vessels, now pending between this country and Great Britain; and the suspicion has been intimated by some that the law was a little warped by the learned judge, with the charitable intent of aiding Mr. Seward in the controversy. To justify either of these ideas, it is of course primarily necessary that the cases should be at least substantially parallel. That they are very far from being so may be briefly shown. The Meteor was built as a purely commercial enterprise, to be sent to a foreign port, there to take her chance of finding a market, subject to the

risk of capture on the way, to be followed by confiscation as contraband of war; and to the further risk, should she reach her destination in safety, of finding no market in case the war should be drawing to a close, or terms could not be agreed on; liable also to be sold to any other bidder who would pay a better price. She differed nowise from any other contraband merchandise except in the wholly insignificant fact that, instead of being of such a nature as to require to be carried, she was able to move herself. She was simply a mercantile speculation in contraband merchandise, which is of all men and nations confessedly and avowedly legitimate. The Alabama presents no one of these characteristics. She was not built, equipped, and despatched from a neutral port to sail as contraband merchandise, subject to the chances of capture and of a market in a foreign port. On the contrary, she shipped a crew of fighting men in the neutral country, and, sailing thence, took in her armament, by the previous skilful disposition of her builders, in other neutral territory. She went nowhere for a sale. She was bargained for, bought, and sold before she left the dock. Her builders took no risk of a market, neither of seizure nor of confiscation as contraband. Briefly, she had not a trait of mercantile adventure or of commercial character or risk about her beyond the naked fact that her building and equipping were paid for, and doubtless handsomely. She was warlike and hostile from the beginning. The contract was to make her such. Her commission as a Confederate war vessel was on board of her in Liverpool. Her only risk was of being sunk or obliged to surrender after a martial encounter. These were the features in the case of the Alabama. In the cases of other vessels, as, for example, the Rappahannock, we find much less effort to regard the laws of neutrality and to keep on the mask of innocence. In the case of the Meteor, the facts, as they are generally understood to have been proved, were diametrically opposite in every respect. That the builders of the Rebel privateers dealt knowingly with the Confederate government through their acknowledged agent, there can be no question; and their failure to complete their bargain would have differed in no essential respect from an ordinary breach of a private contract. No such fact, but precisely the contrary, appears in the case of

the Meteor. The question then being, as Mr. Dana says, of *intent*, the vital difference is readily distinguishable. The English builders had assured their trade before they entered upon the undertaking; the American merchants only had in view a quite probable purchaser. The former were not free to dispose of their ship to any person who might offer her price, for she was bespoken; the latter would have been very glad to have received and closed with a fair offer from any source. In short, the action of the former betrays clearly the *intent*, the element of illegality; but how the action of the latter can have been regarded in the same light, we must confess ourselves unable to see. Where, then, is the similarity? Or why should it have been conceived necessary to sacrifice the Meteor, to overrule old and good law, to create a new necessity requiring to be met by new statutes of untried efficiency, simply for the purpose of creating a precedent which is after all no precedent? We have perhaps dwelt too long on a matter which does not specifically form a part of the work which we are reviewing. But the general doctrine involved forms a very important part of that work; and the question, as one of international law which is even now in process of discussion, is of the first importance, and of equal public and private interest.

When time and trial had proved the benefit and efficiency of Neutrality Acts, and after our final amended Act of 1818 had been passed, Great Britain, profiting by our example, passed in 1819 that statute which has been there known by the name of the Foreign Enlistment Act. For the drafting of this, our own served as a model, and in fact was almost exactly followed, even to the very phraseology, by the English legislators. But they made one exception, and that of the first importance. This was the omission of Sections 10 and 11 of our act, commonly described as the preventive sections, and substantially as follows: — Section 10 requires the owners or consignees of armed vessels about to sail from the United States, which are owned in whole or in part by citizens of the United States, to give security in double the value of the vessel that it shall not be employed by them in hostilities against any state with which the United States is at peace; Section 11 authorizes revenue officers to detain any vessel manifestly built for warlike purposes, whose

cargo shall consist chiefly of munitions of war, when the circumstances render it probable that she is intended to be used in hostilities against any state with which the United States is at peace. The omission of these clauses, which Mr. Dana observes could scarcely have been accidental, was like drawing the fangs from the serpent, or cutting the hoofs from the horse. Without them, the act was halting and almost useless. For many years, like the stranded rope that is not strained, this statute performed well enough the slight services which were required of it. But in our late war the day of trial came, and it was then found wanting. Its defects might have been repaired by a slight and pardonable judicial leaning to the side of manifest justice. But its deficiencies were rendered even unnecessarily flagrant by the extraordinary rulings of the justices upon whom was cast the burden of construing and expounding it. We refer especially to that lamentable exhibition of bad law and bad feeling which was manifested in the noted case of the Alexandra, with regard to which Mr. Dana most truly remarks: "The mortification felt by the English bar, and by all interested in the judicial system of England, was so generally expressed as to have so far passed into history that it may without impropriety be referred to in a treatise on international law." (p. 569, note.) This vessel, upon the complaint of the American Minister, was seized, on behalf of the British government, by process out of the Court of Exchequer. The information, which was in due legal form, charged substantially that she was in course of equipment and arming with the intent and for the purpose that she should be employed in the service of the Confederate States, to cruise against the citizens of the United States. The charges were denied, and the case went to trial on the facts. The evidence showed that the equipping and arming were not completed. Chief Baron Pollock then, in construing the statute to the jury, pronounced a series of startling *dicta*, which by both English and American jurists are, we believe, unanimously condemned; but which were sustained by an equally divided court, in which the Chief Baron himself sat and sustained his own ruling, and the opposing opinion of the youngest Baron was withdrawn in order to render a decision possible, according to the old English custom in such

dilemmas. This result, says Mr. Dana, "only settled that for the purposes of this case the law was inaccessible." But it also plainly showed that, "so far as the opinions of the four Judges of the Exchequer are an indication of the legal construction of the statute to be adopted in England, there is not only no danger, but scarcely any inconvenience, in a belligerent fitting out a vessel of war in a British port, and sailing directly thence to begin a hostile cruise, provided some part of the equipment, necessary to enable her to begin hostile operations at once, is kept separate from her until she is beyond the marine league; although that part may be contracted for, provided, and sent out at the same time, and put on board beyond the marine league." (pp. 569, 570, note.) That the rulings of these judges were not good law, and misinterpreted the statute, there can be little doubt. But the statute itself is nevertheless very seriously defective, and it is certain that our own act affords no such latitude to judges, — that, under it, no such rulings could be made, and no such vessel as the Alexandra could by any legal ingenuity be allowed to escape from the clutches of justice.

But this case raises a general question of the utmost importance, to wit, what is the intrinsic nature of neutrality laws, and what is the effect of their passage? Plainly they are enacted, not to impose new obligations upon a nation, — for this no nation would voluntarily do, — but to codify and to put into fit shape for practical use those previously existing obligations, which already bound the nation simply as a member of the universal society of nations, and by virtue of unquestioned and unquestionable principles of international law. Neutrality laws are solely for the use and aid of the people by whom they are passed. They are simply a very useful species of machinery, created and employed to assist the government in performing its duties to foreign governments. They constitute one of the legislative inventions of modern times, and serve to bring into play the courts and their rules to replace the cumbrous forms and less practicable processes of diplomacy, just as steam is taught to take the place of hand labor. They are useful to forestall and prevent the commission of those acts which, when done, it is the office of long negotiations to palliate

or to repair. The nation is primarily responsible to other nations for certain deeds when done by herself or by any of her subjects. This responsibility has been long since recognized and fixed by international law. In order that she may more promptly and efficiently perform the duties growing out of this responsibility, she passes her neutrality act. But it is a matter wholly of domestic concern. Her liability to her sister nations is not changed one whit thereby; to them it is immaterial what branch of the government is charged with this performance, or what method is taken to secure it. If she relies on the sufficiency of her law, she does it at her own risk, not at the risk of another people. If the law proves insufficient, it is her misfortune; it is the result of her own faulty judgment, and she remains equally liable to make reparation for the wrong which her law has failed to prevent. It is no answer for her, when called upon to make satisfaction for the wrong, to reply that she is very sorry, but must really be pardoned, because her neutrality act was inefficient in the case. What if it were? No one save her own statesmen is responsible for the sufficiency of her neutrality act. It was her own creation, to suit her own requirements, and for her own sole convenience. The other nation does not seek to hold her under this; she is not coming into her courts as a common litigant, to abide by the construction of one of her domestic laws. So far as the injured nation is concerned, the other may pass and revoke such statutes, regard or disregard them, at her pleasure. But under the general law of nations, according to the well-known principles of the international law of the civilized world, the injury must be answered for. It is out of this code that the liability springs, and according to this it must be met. The defect, then, in the English statute could work no acquittal of England in the case of the Alexandra, or in any similar case. We hold her to answer under the law of nations. She may deal with her own statute as she will, and make it efficient or a nullity as she chooses; but her option to do the latter can in no degree affect the relations which exist between herself and the United States as civilized nations.

If it does not sound unbecoming in our mouths, we may

certainly with a just pride seek to compare the honest narrative of our own conduct in strikingly similar circumstances, which occurred just half a century ago, with this tale of English dealings. The Spanish and Portuguese colonies in South America were then in a state of revolt. They had undertaken to cast off the supremacy of European sovereigns, and to establish free and popular governments for themselves, modelled on that of the United States. When their distance from the parent state, the relative power of the contestants, and the actual condition which the struggle soon assumed, are considered, they all point clearly to that successful result as inevitable, which is now matter of history. The sympathy of this country for the revolted colonies was strong; we recognized them as belligerents; not, indeed, with the indecent eagerness with which England and France hastened to recognize the Confederate States, but with such promptness as the correct feeling of our statesmen allowed. In the nation at large the desire to aid them was very strong, and the temptations to individual cupidity were very great. The natural result was a great straining, and even not unfrequently a transgression, of our international obligations, in the way of building, equipping, and despatching privateers to prey upon Spanish and Portuguese commerce. The Portuguese Minister, courteously acknowledging that he was satisfied with the "conscientious earnestness" of the government officials, stated that he would not haggle for a paltry reparation in one or two petty cases; but asked an alteration in our Neutrality Law to meet those requirements for which at present they seemed insufficient. There was manifest justice in his strictures; and with a request preferred in such a spirit we were very properly glad to comply. Our government raised no question of its liability for acts undeniably done in contravention of international law, though not directly infringing our statute, and at once took the desired step. The statute was reformed and made efficient to effect practical conformity with the law of nations; and the European governments liberally acknowledged their satisfaction. The wide discrepancy between this conduct and that of Great Britain is but too clear, but is no clearer than the manifest soundness of the principle of liability which the United States recognized and acted upon.

Mr. Dana's note on "Carrying Hostile Persons and Papers" (p. 637, *et seq.*) is second in execution and in value to none in the work. The treatment of the general question is exceedingly able. But for the general reader of the present generation, even if not for those more professional, the culmination of interest will be in the case of the Trent. This Mr. Dana discusses with unusual fulness; indeed, if he ever lays himself open to the charge of being led to say too much on any subject, by reason of its present and domestic interest, it is in this instance. But the brief historical sketch at the close of his argument puts to silence such a suggestion. The subject demanded a thorough handling and a complete analysis to relieve it from the mist of doubt, which many pamphlets and obscuring clouds of over-much learning have drawn thickly around it. This note dissipates the annoying fog, and admits a beam of clear sunshine, which penetrates and exposes the inmost corners. The lucid train of legal reasoning addresses itself equally to the understanding of the unprofessional and of the professional mind, and to each alike brings conviction. Henceforth, for all but partisans, the mooted points are laid to rest, and the door is closed against all future controversy. Mr. Dana's argument is too long to be sketched, too complete to be shortened. His conclusion is simply this: — That the taking of Messrs. Slidell and Mason from the Trent, and then allowing that vessel to proceed upon her course, instead of bringing her in to abide the decision of a prize court upon the question of law whether or not she was illegally employed and liable to forfeiture, was an irregular and illegal proceeding, not only without precedent, but contrary to precedent and also to analogy, and wholly unknown to any sound principle of law. Therefore he says that the restoration of the envoys was an act of necessity and justice on our part. He thus takes the same ground which was at the time taken by Mr. Seward; and he sustains it with critical accuracy in the citation and interpretation both of special authorities and of general principles, and with a clearness of original argument which must convince any person able to appreciate the points of legal reasoning.

The advocates of the other side are not formidable. Mr. Lawrence, in his Appendix, treats of the case at considerable

length. It will be remembered that, promptly upon news of the occurrence, he publicly pronounced his opinion that it was regular and justifiable. His statement at the time was highly valued and much talked of, and doubtless he was somewhat nettled at its quiet fate. His argument in his Appendix bears a painful resemblance to the effort of a man who has hastily uttered an erroneous opinion, who does not know how to recede gracefully, but who is yet resolved not to eat his words, and is bringing to bear all the plausibility and ingenuity of his more thoughtful hours to set forth his views anew with such force and skill as at least to give the matter the appearance of a disputed point. His attempts, however, are futile. He is met at every point, and overthrown. His supposed parallels diverge widely; his authorities do not support the doctrines which they are cited to sustain; the sequence of his argument is illogical. All this is necessarily exposed in the sound reasoning of Mr. Dana. The real, or perhaps we should say the possible, obscurity in the case begins just where the facts end; that is to say, it lies in the question, What would have been the decision of the prize court had the Trent been brought in by Commodore Wilkes and subjected to a trial on the charge of illegal service of a nature to render her liable to confiscation? The probable result of such a trial, with the obvious arguments on each side, together with the position in which a decree of condemnation would have placed Messrs. Mason and Slidell, are discussed by Mr. Dana at some length, and with the skill of one accustomed to deal with such questions. But this is of course all mere speculation; and the trial, had it ever occurred, would have been a leading case, with no conclusive rule or sufficient precedent to manifest clearly its necessary result. Mr. Lawrence relies much upon, and quotes liberally from, the French publicist Hautefeuille, who published a pamphlet adopting the same view of the case. It is but the halting man leaning on the bruised reed. Hautefeuille enjoys more notoriety than fame, — is more valuable as a speculator than as an authority. Writing on a subject where established principles and precedents are everything, — which in fact depends upon these for its very existence, — which finds in them its whole past and present sustenance, and without them would become a name,

a shade, an historical reminiscence, and nothing more, — he throws off all trammels, disregards all established doctrines, follows only his own theories, gives us chiefly the result of his own reflections, lays down as the law of nations that which he considers *should* be such, seeks to obliterate the past, and to establish a new system to which his book shall be what the Koran is to the Mohammedan religion, and seems to anticipate that sovereigns, legislators, and statesmen will reverence and submit to his word of power. It is not surprising that, under the influence of those feelings of hostility to the North which influenced Frenchmen scarcely less than Englishmen at the time of this affair, M. Hautefeuille found himself quite free to take any view which would enable him to attack the United States government. Neither is it strange that Mr. Lawrence, in his awkward quandary, seeking for company, had recourse to one whose opinions upon this point, no less than his general sentiments on the grand issue then before the world, were so much in unison with his own.

With this we must take leave of the work before us. But as we look abroad on the present state of affairs, — the complications which bid fair to grow out of the present state of our own relations with France and the Imperial party in Mexico, — the German war, which has brought about such vast changes in Central Europe, — the question of the Northeastern fisheries, temporarily quieted, and at present, perhaps, like the little cloud no bigger than a man's hand, but which may be pregnant with the thunder and the lightning, — the extraordinary possibilities which some persons anticipate in the case of the Meteor, — and last, but not least, the important matter of the equipment of the Alabama and her sister privateers, now in discussion between ourselves and Great Britain, — a controversy which presents a series of unsettled questions, and which, when its parts shall have received connection and vitality from a final decision, will be surpassed in value by no other fragment in the entire science, — as we regard all these now existing perplexities, soon, probably, to be settled, we need hardly contemplate the chance that more will soon arise, in order to assure us that many years cannot pass before further annotations recording the progress of the law will be called for. We

have no question that the opinion of those most competent to judge will coincide with and confirm that which we have ventured to express concerning the worth of Mr. Dana's notes to the present edition of Wheaton's Treatise, and we trust that in future editions he may add still further to the value of the work and to his own distinguished reputation.

ART. VI. — *Harvard Memorial Biographies.* Cambridge: Sever and Francis. 1866. 2 vols. 8vo. pp. 478, 512.

THESE volumes are a memorial interesting not to the graduates of Harvard University alone, but to every American. They contain a gallery of portraits such as can nowhere else be found. Never before was there such a record of youth as is here set forth. For most of the ninety-five biographies in these volumes are of very young men, who gave their lives to the service of their country, having received such culture as our most famous and ancient University could bestow. These young men were fair specimens of the most highly educated youth of America, but exceptional in no respect save in this point of college education; not nobler or better than their college companions, not nobler or better in native qualities than the young farmer from Maine or Illinois, or the young shop-boy from New York, or the mechanic from Philadelphia, whose blood was shed upon the same fields where they fell, but happier perhaps than farmer, shop-boy, or mechanic in having their characters developed by richer culture, and happier than their companions in having been blessed with the privilege of voluntarily offering themselves to maintain and advance the cause of human rights, of liberty, and of law, and of dying for their country in the contest in support of this cause. They truly represent their race and time. They are the genuine sons of America

> "Quæ cum magna modis multis videtur
> Gentibus humanis, regio visendaque fertur,
> Rebus optima bonis, multa munita virum vi,
> Nil tamen his habuisse viris præclarius in se
> Nec sanctum magis, et mirum, carumque videtur."